

§ 70.251

27 CFR Ch. I (4-1-16 Edition)

Periods of Limitation in Judicial Proceedings

§ 70.251 Periods of limitation on suits by taxpayers.

(a) No suit or proceeding under section 7422(a) of the Internal Revenue Code for the recovery of any internal revenue tax, penalty, or other sum shall be begun until whichever of the following first occurs:

(1) The expiration of 6 months from the date of the filing of the claim for credit or refund, or

(2) A decision is rendered on such claim prior to the expiration of 6 months after the filing thereof. Except as provided in paragraph (b) of this section, no suit or proceeding for the recovery of any tax, penalty, or other sum imposed under the provision of 26 U.S.C. enforced and administered by the Bureau may be brought after the expiration of 2 years from the date of mailing, by either registered or certified mail, by an appropriate TTB officer, to a taxpayer of a statutory notice of disallowance of the part of the claim to which the suit or proceeding relates.

(b) The 2-year period described in paragraph (a) of this section may be extended if an agreement to extend the running of the period of limitations is executed. The agreement must be signed by the taxpayer or by an attorney, agent, trustee, or other fiduciary on behalf of the taxpayer. If the agreement is signed by a person other than the taxpayer, it shall be accompanied by an authenticated copy of the power of attorney or other legal evidence of the authority of such person to act on behalf of the taxpayer. If the taxpayer is a corporation, the agreement should be signed with the corporate name followed by the signature of a duly authorized officer of the corporation. The agreement will not be effective until signed by an appropriate officer.

(c) The taxpayer may sign a waiver of the requirement that the taxpayer be mailed a notice of disallowance. Such waiver is irrevocable and will commence the running of the 2-year period described in paragraph (a) of this section on the date the waiver is filed. The waiver shall set forth:

(1) The type of tax and the taxable period covered by the taxpayer's claim for refund;

(2) The amount of the claim;

(3) The amount of the claim disallowed;

(4) A statement that the taxpayer agrees the filing of the waiver will commence the running of the 2-year period provided for in section 6532(a)(1) as if a notice of disallowance had been sent the taxpayer by either registered or certified mail.

The filing of such a waiver prior to the expiration of 6 months from the date the claim was filed does not permit the filing of a suit for refund prior to the time specified in section 6532(a)(1) and paragraph (a) of this section.

(d) Any consideration, reconsideration, or other action with respect to a claim after the mailing, by either registered or certified mail, of a notice of disallowance or after the execution of a waiver referred to in paragraph (c) of this section, shall not extend the period for bringing suit or other proceeding under section 7422(a) of the Internal Revenue Code.

(26 U.S.C. 6532)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated and amended by T.D. ATF-301, 55 FR 47606, 47648, Nov. 14, 1990]

§ 70.252 Periods of limitation on suits by the United States.

The United States may not recover any erroneous refund by civil action under section 7405 of the Internal Revenue Code unless such action is begun within 2 years after the making of such refund. However, if any part of the refund was induced by fraud or misrepresentation of a material fact, the action to recover the erroneous refund may be brought at any time within 5 years from the date the refund was made.

(26 U.S.C. 6532)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Redesignated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§ 70.253 Periods of limitation on suits by persons other than taxpayers.

(a) *General rule.* No suit or proceeding, except as otherwise provided in 26 U.S.C. 6532(c)(2) and paragraph (b) of this section, under 26 U.S.C. 7426 and

§ 70.207 of this part relating to civil actions by persons other than taxpayers, shall be begun after the expiration of 9 months from the date of levy or agreement under 26 U.S.C. 6325(b)(3) giving rise to such action.

(b) *Period when claim is filed.* The 9-month period described in 26 U.S.C. 6532(c)(1) and paragraph (a) of this section shall be extended to the shorter of

(1) 12 months from the date of filing by a third party of a written request under § 70.167(b)(2) of this part for the return of property wrongfully levied upon, or

(2) 6 months from the date of mailing by registered or certified mail by the appropriate TTB officer to the party claimant of a notice of disallowance of the part of the request to which the action relates. A request which, under § 70.167(b)(3) of this part, is not considered adequate does not extend the 9-month period described in paragraph (a) of this section.

(26 U.S.C. 6532)

[T.D. ATF-301, 55 FR 47648, Nov. 14, 1990, as amended by T.D. ATF-450, 66 FR 29028, May 29, 2001]

Limitations on Credit or Refund

§ 70.261 Period of limitation on filing claim.

(a) In the case of any tax (other than a tax payable by stamp):

(1) If a return is filed, a claim for credit or refund of an overpayment must be filed by the taxpayer within 3 years from the time the return was filed or within 2 years from the time the tax was paid, whichever of such periods expires the later.

(2) If no return is filed, the claim for credit or refund of an overpayment must be filed by the taxpayer within 2 years from the time the tax was paid.

(b) In the case of any tax payable by means of a stamp, a claim for credit or refund of an overpayment of such tax must be filed by the taxpayer within 3 years from the time the tax was paid. For provisions relating to redemption of unused stamps, see section 6805 of the Internal Revenue Code.

(c) For limitations on allowance of credit or refund, special rules, and exceptions, see subsections (b) and (c) of section 6511 of the Internal Revenue

Code. For rules as to time return is deemed filed and tax considered paid, see section 6513 of the Internal Revenue Code.

(26 U.S.C. 6511)

[T.D. ATF-251, 52 FR 19314, May 22, 1987. Re-designated by T.D. ATF-301, 55 FR 47606, Nov. 14, 1990]

§ 70.262 Limitations on allowance of credits and refunds.

(a) *Effect of filing claim.* Unless a claim for credit or refund of an overpayment is filed within the period of limitation prescribed in section 6511(a), no credit or refund shall be allowed or made after the expiration of such period.

(b) *Limit on amount to be credited or refunded.* In the case of any tax (other than a tax payable by stamp):

(1) If a return was filed, and a claim is filed within 3 years from the time the return was filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the period, immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return.

(2) If a return was filed, and a claim is filed after the 3 year period described in paragraph (b)(1) of this section, but within 2 years from the time the tax was paid, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(3) If no return was filed, but a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 2 years immediately preceding the filing of the claim.

(4) If no claim is filed, the amount of the credit or refund allowed or made shall not exceed the amount that would have been allowable under the preceding subparagraphs if a claim had been filed on the date the credit or refund is allowed.

(c) *In the case of a tax payable by stamp.* (1) If a claim is filed, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.